IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1300 OF 2003

Jaya @ Anant Balwant Malvankar,
Age 38 years, Occ. Service,
R/o. Barrack No.1358,
Maratha Section, Ulhasnagar-4,
District Thane ...Petitioner

Versus

1. P.V. Ugale,
Asstt. Comissioner of Police
Ulhasnagar Division,
Dist. Thane.

2. Shri. Ajit Patil,
Deputy Commissioner of
Police, Zone-IV,
Ulhasnagar, Dist. Thane.

3. Chief Secretary,
Home Department,
Mantralaya, Mumbai.

4. The State of Maharashtra ...Respondents.

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Shri. S.V. Marwadi with Ms. Sunita Sharma advocates for the petitioner.

Shri. A.S. Shitole, A.P.P. for Respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 5TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Heard Shri. Marwadi, the learned advocate for the petitioner and Shri. Shitole, the learned A.P.P. for the respondents.

2. The petitioner has challenged the order of externment dated 21.6.2003 passed by the Deputy Commissioner of Police, Zone-IV, Ulhasnagar. The said order has been confirmed by the State Government i.e. respondent No.3 herein by order dated 11.08.2003. The externment order has been based on C.R. No. 117/2002 of Vitthalwadi police station, N.C. 666/2002 of Vitthalwadi police station and two statements of in camera witnesses "A" and "B".

3. The said externment order has been challenged by filing the present petition on the ground that the show cause notice does not mention the specified period during which the alleged activity took place. As stated earlier the externment order is based on one C.R., one N.C. and two in camera statements. The dates when these four incidents took place are clearly reflected in the show cause notice. It is clearly stated in the show cause notice that the incident pertaining to C.R. No. 117/2002 took place on 20.8.2002. The incident pertaining to N.C. 666/2002 took place on 13.8.2002 and the incident pertaining to the two in camera witnesses "A" and "B" took place on 24.10.2002 and 11.11.2002 respectively. Thus, there is no merit in this submission.

4. Thereafter, Mr. Marwadi, the learned advocate for the petitioner has submitted that the order of externment is based on general averments and allegations which were not made the subject matter of the show cause notice. Thus, there was a total non application of mind on the part of the externing authority, hence, he has submitted that the externment order is vitiated and liable to the quashed. Mr. Marwadi has placed reliance on the judgment of this Court in the case of **Khudabax Davalsab Kamtikar Vs. Sub-Divisional Magistrate, Solapur reported in 1998(1) Bom. C.R. 56.** In the said judgment it is observed that the petitioner is prejudiced as he was given no notice even generally about the period during which he was alleged to have committed several acts or offences. Secondly the final order of externment mentions acts which are not mentioned in the notice under Section 59 of the Bombay Police Act.

5. I have perused the show cause notice dated 5.3.2003 as well as the the order of externment dated 21.6.2003 and I find that the period when the incidents took place are mentioned in the show cause notice. Moreover I find all the averments which have been made in the externment order are reflected in the show cause notice. In the present case, it cannot be said that any of the averments

in the externment order were not made the subject matter of the show cause notice, thus there is no merit in this submission.

6. Mr. Marwadi has further submitted that the externment order is based on extraneous material. The said material is not reflected in the show cause notice. According to Mr. Marwadi, the extraneous material which is reflected in the order of externment is that the externing authority has observed as under:-

> " I am satisfied that .....
>
> .....he is engaged in the commission of offence of creating region of the terror in vicinity by assaults, cause hurts to the residents, businessmen, shopkeepers and common citizens of the aforesaid localities and areas, suspecting them to be giving information/complaint/witness to the police about his illegal activities, and offence of hurts registered against him and engaged in the commission of offences of giving threats, abuses, commits robberies by extorting money from the residents, businessmen and

common citizens of the aforesaid localities and areas."

7. As far as the aspect that the petitioner created reign of terror in vicinity by assaults, causing hurt to the residents, businessmen, shopkeepers and common citizens of the aforesaid localities and areas, suspecting them to be giving information, complaint, witness to the police about his illegal activities is concerned, the said material is reflected in the second para of the show cause notice. Thus, there is no merit in this submission.

8. As far as the middle portion is concerned i.e. "the offence of hurt registered against the petitioner" the contents of the show cause notice clearly shows that C.R. No. 117/2002 under Section 324, 452 and 504 of I.P.C. has been registered against the petitioner. The facts relating to the said case are also reflected in the show cause notice which clearly shows that the petitioner alongwith his associates entered into the house of the complainant and caused injuries with sword to Smt. Yashswini Lahu Naik. Thus, there is material to show that the offence of causing hurt has been registered against the

petitioner.

9. As far as the last part is concerned i.e. he is engaged in commission of offence of giving threats, abuses, committing robberies by extorting money from the residents, businessmen and common citizens of the said localities and areas, there is material which is reflected in the show cause notice on the basis of which this averment has been made. From the facts relating to C.R. No. 117/2002 and N.C. 666/2002 it is seen that the petitioner has been indulging in the activity of giving abuses. As far as the last part is concerned i.e. the averments in the externment order that the petitioner commits offences by giving threats, abuses, commits robberies by extorting money from the residents, businessmen and common citizens of the said localities and areas, also there is material in the form of statements of in camera witnesses which is reflected in the show cause notice, that he is engaged in giving threats and abuses is seen from the facts relating to N.C. 666/2002 as well as the statements of two in camera witnesses.

10. Mr. Marwadi has vehemently urged that the fact that the petitioner commits robberies by extorting money is not reflected in the show cause

notice. Mr. Marwadi has reiterated that there is no mention about the petitioner committing robbery in the show cause notice and thus, the externing authority has taken into consideration extraneous material and issued the order of externment. It is pertinent to note that the externment order does not only mention that the petitioner commits robbery but it mentions that he commits robbery by extorting money and, thus this kind of activity indulged in by the petitioner is specifically reflected in the show cause notice. This kind of activity has been clearly stated by the two in camera witnesses which is reflected in the show cause notice. Thus, I do not find any merit in the submission that the externment order is based on extraneous material.

11. In this view of the matter, no interference is called for in the order of externment dated 21.6.2003 passed by the Deputy Commissioner of Police, Zone-IV, Ulhasnagar which is confirmed in appeal by the State Government by order dated 11.8.2003. Writ petition is rejected. Rule is discharged.